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ABSTRACT

Published prior to the U.S. Supreme Court decision on the case, this report puts into perspective the questions and problems before the State of Texas in resolving the issue raised by Rodriguez vs San Antonio. The document reviews the key elements of the decision in the Rodriguez case and considers alternative approaches that comply with the decision. The current method of public school financing is examined, and proposed plans and the State costs involved are considered. The publication also discusses ways to measure a school district's fiscal ability and taxpayer equity. It concludes with a recommended legislative strategy for public school finance and property tax reform. (Author/DN)

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TEXAS ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS

TEXAS PUBLIC SCHOOL FINANCE:

RESOLVING THE ISSUE

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TEXAS PUBLIC SCHOOL FINANCE:
RESOLVING THE ISSUE

A Report of the

TEXAS ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

January 1973

FOREWORD

Education, among all the purposes of state and local governments, occupies a singularly important position. This importance is founded upon a fundamental tenet of our society embodying a strong belief in equal opportunity for every citizen. A cornerstone for the personal and social construction of this tenet is equality in public education, and the growing complexity of our day underscores the essential role of education in providing equal opportunity in every sphere of individual promise and achievement.

During the year since equality in public school education in Texas was called into question by the Federal court in Rodriguez v. San Antonio because of its method of financing, a concerted effort on the part of many organizations has been devoted to an examination of this issue. Serious attempts have been made to develop a better way to finance Texas public schools in order to provide more equality in the education of the state's youth. The Texas Advisory Commission on Intergovernmental Relations has been active in coordinating this work as requested by Governor Preston Smith in January 1972.

The Commission believes that members of the Legislature and the citizens of Texas should be provided a report, as the Sixty-third Session begins, which puts into perspective the questions and problems before the state in resolving the issue raised by the Rodriguez case and which examines the solutions thus far offered. The Commission, therefore, is presenting this report in the hope that it may aid the state in action to improve equality in public school education and, thereby, to improve equal opportunity for all Texas children.

The report contains the conclusions and recommendations of the Commission. Its preparation was the responsibility of N. David Spurgin, Director of Public Finance for the Commission, with assistance from Paulette Alexander.

Austin, Texas
January 1973

Tom J. Vandergriff
Chairman

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INTRODUCTION

In December 1971, public school education in Texas was confronted with the most serious challenge for reform since the historic Gilmer-Aikin report of 1948. The District Court decision in the case of Demetrio P. Rodriguez, et al., v. San Antonio Independent School District, et al. required the state to develop a new system for financing public elementary and secondary education and to implement this system within two years. The timetable for compliance indicated that every effort had to be made during 1972 to utilize the full resources of state government and public education organizations to prepare for consideration of a new public school finance system by the 63rd Legislature this year.

Several committees authorized by the 62nd Legislature to deal with topics related to public schools, including financial matters, were appointed about the time of the Rodriguez decision. The State Board of Education announced its intention to undertake a broad study, and various other groups announced intentions to address the subject of public school finance in some way. In January, Governor Smith requested the Texas Advisory Commission on Intergovernmental Relations to accept a coordinating role and to facilitate a cooperative approach to the study efforts which were needed as a result of the Rodriguez decision.

In response to this request, the Advisory Commission organized and hosted a series of meetings of governmental and public education groups interested in the development of plans to reform the state's system of public school finance. These groups included the Texas Education Agency, Special Senate Interim Committee to Study Public School Finance, House Committee on Public School Finance, Legislative Property Tax Committee, Texas State Teachers Association, Texas Association of School Boards and the Texas Research League.

At the initial meeting in March there was general agreement that in order to develop new plans, especially if these plans were to comply with the Rodriguez decision, accurate measurement of the property wealth of the state was needed. The groups devised a three phase plan which called for:

(1) collection of the best current information available on assessment ratios and calculation of the total market value of property on the tax roll of each school district;

(2) supplementation and improvement of the data thus developed by conduct of a statewide assessment ratio study using the U.S. Bureau of the Census; and

(3) development of a permanent measuring system in Texas.

Phase 1 was initiated immediately, and results were published in September by the Texas Education Agency on behalf of all the study groups in the report, "Preliminary Estimates of 1970 Market Value of Taxed Property of Texas School Districts." The figures in the report were noted to be preliminary and useful only for planning purposes. They have been updated as further reliable data have become available from local districts.

Planning for Phase 2 was also initiated, and a request was made to the 3rd Called Session of the 62nd Legislature for funds to conduct a statewide assessment ratio study in cooperation with the U.S. Census Bureau. No appropriation was made for this purpose during the short special session.

Draft legislation to authorize annual studies to determine the value of local Texas school district property was also considered and is the subject of one of the recommendations of the Advisory Commission in this report.

By late July, joint attention was turned to a basic outline of the questions which needed to be addressed in the various studies. At a meeting in August, representatives of the finance study groups agreed to work toward coordinated completion of studies in progress and those added on the basis of the outline.

At meetings in September and October, draft reports prepared in each of the following areas were reviewed by study group representatives:

(1) evaluation of present public education services, by the Texas Education Agency;

(2) a statement of the legal requirements of the Rodriguez decision, by the Advisory Commission staff;

(3) a definition of local control, by the Texas Association of School Boards;

(4) statement of population to be served and types of services to be offered, by the Texas Education Agency; and

(5) a preliminary study of the ability of the state to support education, by the Office of Information Services.

At the October meeting, also, the staff of the Senate Committee reported on the alternatives which had been developed in its research.

The report of the Committee on Public School Finance of the State Board of Education and the proposed plan of the Texas State Teachers Association formed the basis for a lengthy and detailed discussion at the meeting of the study groups held in November. On December 1, 1972, the chairmen of the committees and boards met to discuss their respective proposals and views and to consider further coordination requirements.

As the work begun by the study groups now moves into the arena of legislative policy-making, the Advisory Commission offers this report as one of the points of reference from which the Governor and Members of the 63rd Legislature may begin the difficult process of deliberating and adopting a new plan for public school finance in Texas.

THE RODRIGUEZ CASE

The case of Demetrio P. Rodriguez, et al. v. San Antonio Independent School District, et al. is one of a number of cases in recent years in which the public school finance systems of several states have been challenged for allegedly denying equal educational opportunity. Although preceded by Serrano in California and Van Dusartz in Minnesota, the Rodriguez case is the first to be appealed to the Supreme Court of the United States on the specific legal grounds involved in these cases. Rodriguez has become, consequently, not only an important Texas school finance case but a landmark federal case which, if upheld, will profoundly affect public school education and state and local government finance throughout the nation.

Development and Status of the Case

The Rodriguez suit was originally filed in July of 1968 in United States District Court in San Antonio. Action in the case was delayed by the court in 1969-70 because revisions to the state's system for financing public schools were then under consideration by the Texas Legislature. When reform through the Legislature failed, additional arguments were heard, and on December 23, 1971, the court rendered its decision. In declaring the Texas system of public school finance unconstitutional, the District Court granted a stay of two years, until December 23, 1973, for the state to take corrective action.

The Attorney General of Texas appealed the decision of the District Court to the United States Supreme Court in February 1972, and in June the high court agreed to hear the appeal. Arguments were presented in October, and a decision is now awaited.

The District Court Decision

The District Court found the Texas system of public school finance unconstitutional because it

> "discriminates on the basis of wealth by permitting citizens of affluent districts to provide a higher quality of education for their children, while paying lower taxes...[and, therefore, denies] equal protection of the laws under the Fourteenth Amendment to the United States Constitution by the operation of Article 7, Section 3 of the Texas Constitution and the sections of the Education Code relating to the financing of education, including the Minimum Foundation Program."

The kind of situation which in the mind of the court warranted such a conclusion was illustrated by a comparison of taxes and revenues between two local school districts in Bexar County. The Edgewood School district in the 1968 school year raised only $21 per student from local property taxes compared to $307 in the neighboring district of Alamo Heights despite a much higher effective tax rate in the Edgewood district. The court noted:

> "Nor does State financial assistance serve to equalize these great disparaties. Funds provided from the combined local-state system of financing...ranges from $231 per pupil in Edgewood to $543 per pupil in Alamo Heights... For poor school districts education financing in Texas is, thus, a tax more, spend less system. The constitutional and statutory framework employed by the State in providing education draws distinction between groups of citizens depending upon the wealth of the district in which they live."

The court found this distinction, based as it is upon local school district property tax wealth, to be unconstitutional. The court stated that a proper remedy to this constitutional fault in the Texas public school finance system could be any one of a variety of new systems which "does not make the quality of public education a function of wealth other than the wealth of the state as a whole."

Key Elements of the Decision

The court did not declare unconstitutional the use of local property taxes to finance public school education. The court's decision does seem to mean that local property tax resources must not measurably affect the total amount of educational revenues available per student in any school district.

The decision would not appear to require absolutely equal spending per student. Revenues might vary because the state recognizes differeces in educational need among its public school students or because of varying basic cost levels associated with school district size or location.

Uniformity of educational experience also is not required by the decision. Local control of curriculum, instructional methods and similar matters is not unavoidably jeopardized by the decision. Differences in the educational opportunities offered to public school students in every school district in the state, however, cannot depend upon the financial ability of individual districts to support these differences.

The court's decision excluded consideration of federal educational aid in determining whether the state's school finance system is discriminatory on the basis of wealth. The court left uncertain, however,

whether capital facility financing must be equalized and whether taxpayer equity would be required in any new public school finance system.

Alternative Approaches to Comply With the Decision

There are at least five different approaches to a new public school finance system which would comply with the District Court's decision in the Rodriguez case.

1. Full State Funding. The state could pay 100 percent of the costs of public school education. The local property tax might be retained to finance school facilities since the court's decision may not require equalization of school district ability to finance capital improvements.

2. State Grant System. The state could provide a grant of equal amount per student or of varying amounts on the basis of predetermined differences in students' educational needs or, possibly, on the basis of school district size or location. In addition, the state would permit local district supplementation of this grant not to exceed a specified maximum per student within the capacity of every district.

3. Equalizing State Aid. The state would provide aid to individual school districts in an amount which would, when added to local revenues required as a condition of eligibility for state aid, provide equal revenues per student. Local supplementation would either be prohibited, or a maximum per student, again, within the capacity of every district, would be established.

4. Power Equalization. The state could guarantee that each district could produce the same revenue per student from the application of the same effective local property tax rate. Districts with more than average wealth would probably be required to remit tax collections above a specified level to the state for redistribution to below-average districts.

5. School District Reorganization. The state's school districts could be reorganized in such a manner that each had approximately the same property tax base per student.

Other approaches might be possible, and some of those listed here could be used in combination. The key to compliance with the District Court decision is to preclude variations in local property tax wealth from having a markedly different affect on school district revenues per student. The decision prescribes no formula for this result.

A REVIEW OF PROPOSED PLANS

Two of the three study groups developing plans to revise Texas' system of public school finance released proposals which were available in time to be reviewed in this report. The Special Senate Committee's actions earlier this month could not be analyzed in time for this report.

On November 11, the Committee on Public School Finance of the State Board of Education presented its plan for consideration by the full State Board. A majority of Board members who met this month to consider the Committee plan were sitting on the Board for the first time, and with a large new membership the Board elected to defer action pending further study.

The Committee to Study Public School Program and Finance of the Texas State Teachers Association presented its plan to the TSTA Legislative Committee in late October. The Executive Committee of the TSTA accepted this plan and directed the Legislative Committee to begin drafting the legislation necessary to implement it. As this legislation is being prepared, the TSTA plan reviewed herein is subject to reconsideration and revision by both the Legislative and Executive committees.

Current Public School Financing

Public elementary and secondary education in Texas cost approximately $2.1 billion in total federal, state and local funds in the 1970-71 school year (the latest year for which complete data are available). When federal support of about $230 million, spending of bond proceeds of $190 million and other costs of about $117 million are subtracted from this total, public school operating costs of about $1.5 billion emerge for the 1970-71 year.

School district operating costs fall into three categories: (1) personnel, (2) consumable supplies and materials and equipment and (3) student transportation. The Foundation School Program, the state-guaranteed education program available in every Texas school district (with special exceptions), is defined by an allocation plan which determines the amount of revenues available to each district through this program for financing each category of operating costs. The Foundation School Program produced revenues of over $1.0 billion to support these costs in 1970-71. Revenues of local school districts in excess of Foundation School Program requirements, so-called "enrichment", accounted for the balance of something under $500 million devoted to public school education operations in that year. It is with the financing of public school operating costs that the two plans reviewed attempt to deal.

Equalization of Revenues

In the 1970-71 school year, the average operating expenditure per student in Texas public schools was just over $600. Among school districts, however, operating costs per student varied from a low of less than $300 to a high of almost $6,600. In order to move toward equalization in this situation, three alternatives are possible. High per student spending could be scaled back, requiring districts with such spending to reduce personnel and other, related expenditures. Low per student spending could be increased, upward even to the level of the highest expenditure district to achieve complete equalization. Both scaling back of high spending and raising of low spending could be attempted to achieve either a uniform level or a much narrower range of differences in spending than now exist.

One means of undertaking upward equalization is to modify the allocation plan of the state-guaranteed program to include a higher percentage of actual operating costs. The degree of equalization achieved by this method depends upon the extent to which the revised allocation plan covers the operating costs of districts with high expenditures per student (as long as the potential for local district supplementation of the state-guaranteed program beyond existing levels is disregarded). Both the State Board of Education Committee plan and the Texas State Teachers Association plan utilize this method in attempting to achieve greater equalization among school districts.

The following table compares selected elements from the allocation plan contained in each proposal and the current Foundation School Program plan. Although the TSTA plan utilizes Average Daily Membership (ADM) rather than Average Daily Attendance (ADA), this table is based on the conversion of ADM to ADA to facilitate comparison.

Comparison of Selected Elements
Of Allocation Plans

Plan Element	Current Foundation School Program	State Board Committee Plan	TSTA Plan
1. Classroom Teachers			
(Simplified) Districts Size by ADA			
Up to 109	1 per 21 ADA	1 per 21 ADA	7
110-444	1 per 24 ADA	1 per 24 ADA	
110-190			8
191 or more			1 per 22.4 ADA
445 or more	1 per 25 ADA	1 per 25 ADA	

	Plan Element	Current Foundation School Program	State Board Committee Plan	TSTA Plan
2.	Program Adjustment Allowance	None	None	$53.50 per ADA
3.	Compensatory Education Allowance	None	$100 per Title I student	$75 per "educationally handicapped" student
4.	Operating Allowance	$29 per ADA	$120 per ADA	$132.50 per ADA
5.	Pay Schedule Increase	None	None	$700 per teacher

A review of the comparison reveals that the equalizing effect of the TSTA plan probably would be significantly greater than that of the State Board Committee proposal. Reportedly, the State Board Committee plan was prepared in an attempt to cover operating costs in districts with about 50 percent of Texas public school students. The TSTA plan, on the other hand, purportedly covers operating costs in districts with 80 percent of public school students. In other words, the State Board Committee plan would presumably equalize operating revenues for up to one-half of Texas' 2.5 million public school students while the TSTA plan would equalize revenues for around 80 percent (ignoring, again, future enrichment potential).

Because of the complexities involved in the application of each plan to the state's 1149 school districts, only an analysis of the results of a district by district application of each plan will permit accurate conclusions about the exact effects of each plan. Such an analysis has not been possible for this report but is being undertaken by the Texas Research League as a part of its public school finance study requested early last year by then Lt. Governor Ben Barnes and by the Texas Education Agency with respect to the State Board Committee proposal.

Methods of Financing

Under the Foundation School Program the state government and local school districts share in the cost of the state-guaranteed education program defined by the program's allocation plan. The state pays approximately 80 percent of this cost, and local districts finance the other 20 percent. The required contribution of each district is based, not upon the cost of the program in the district, but upon the district's fiscal ability compared with that of every other school district as measured by the state, using the Economic Index-County Tax Roll approach.

The TSTA plan would continue a state-local cost sharing arrangement for financing the state-guaranteed program. It would, however, increase the local share to 30 percent of statewide Foundation School Program costs and reduce the state share to 70 percent. Since present enrichment spending is funded primarily from local school property taxes, the intent of this change is to utilize more of the revenue currently provided from this source to finance the redefined Foundation School Program than a 20 percent local share would require.

The TSTA plan also would change the basis on which individual school district fiscal ability is measured from the present Economic Index-County Tax Roll approach to the full market value of district property. Local districts would continue to be permitted to spend local funds in excess of the Foundation School Program up to the legal maximum tax rate limit of $1.50 per $100 of assessed valuation. (Debt service financing is included within this limit in numerous districts.)

In place of state-local cost sharing the State Board Committee plan would substitute a state grant system which would require no local district contribution for financing the state-guaranteed program. The present requirement of 20 percent local sharing would be phased out by the 1978-79 school year according to the following schedule:

School Year	Local Share (%)
1973-74	20
1974-75	17
1975-76	13
1976-77	10
1977-78	6
1978-79	0

The amount of the state grant which would be provided each Texas school district when the plan was fully effective in the 1978-79 year would be determined by the allocation plan in the State Board Committee's proposal. Local districts would be able to supplement the state grant from local school property taxes on an unrestricted basis within the present maximum tax rate limit (including debt service where applicable).

Meeting the *RODRIGUEZ* Requirement

The District Court decision in the Rodriguez case requires that the quality of education available to every Texas public school student

under any new system of financing adopted by the state, to the extent that it is determined by wealth, be determined only by the wealth of the whole state. Although the Court's decision does not require absolutely equal spending per student, it seems clearly to imply that unequal spending caused by differences in the ability of local school districts to supplement the state-guaranteed educational program would be unconstitutional.

Estimated property values among Texas school districts vary from less than $5,000 to more than $10,000,000 per student. These differences obviously make enrichment spending easier for some districts than for others and can create unequal per student spending in excess of the state-guaranteed program, as they currently do, unless their potential use is equalized in some manner in a new public school finance system.

Neither the State Board of Education Committee plan nor the Texas State Teachers Association plan directly attempts to equalize the potential use of the local school property tax to supplement the state-guaranteed program. The State Board Committee plan would, in fact, when fully implemented in 1978-79, leave the entire $1.50 maximum tax (although it often includes debt service) available for supplementation by local districts, using their existing, highly unequal property tax bases. The TSTA plan would "use up" some of the enrichment potential of the local property tax by requiring that 30 percent of the statewide cost of the Foundation School Program be financed from this source. This requirement would have the effect of reducing potential differences in the amount of supplementation; it would certainly not, however, eliminate the potential for marked differences in enrichment. The impact of both plans on potential supplementation of the state-guaranteed program is illustrated in the following table.

Illustration of Effect of State Board Committee and TSTA Plans on Potential Supplementation
(Per Student)

	School District A	School District B	Difference in Supplementation Potential
Full Value Of Property	$40,000	$80,000	
Supplementation Potential With State Board Committee Plan ($1.50 maximum tax rate)	600	1,200	600
Foundation School Program Tax required by TSTA Plan*	188	376	
Supplementation Potential With TSTA Plan	412	824	412

*TSTA has estimated that a tax of $.47 per $100 of full value might be required to finance the 30 percent local share of its proposed Foundation School Program, based upon an assumed total statewide local cost of $600 million.

It is also important to note that neither plan attempts to equalize the ability of Texas school districts to finance capital improvements. While school facility construction has historically been the sole responsibility of local districts, the Rodriguez decision may require equalization in this area, too. The District Court decision is vague on this subject, and clarification may be needed if the decision is upheld.

State Costs of the Plans

During the current state fiscal year the Foundation School Program will cost an estimated total of $1.211 billion in state and local funds. Between 1972-73 and 1978-79, when the State Board Committee plan would be fully implemented, the total cost of the present Foundation School Program is expected to rise by $464 million as a

result of additional cost increases already enacted into law. The allocation plan proposed by the State Board Committee would add another $400 million to these costs in that year. These increases would bring the total cost of the program in 1978-79 to $2.075 billion and because there would be no local share, the state government would finance this entire amount.

The state's share of the Foundation School Program in the current year is approximately $983 million, and the State Board Committee's proposal would result in an increased cost to the state of over $1 billion in 1978-79. The total annual cost and annual total and state cost increases of the State Board Committee plan are shown in the following table, with the cost of previously legislated increases included.

Estimated Annual State Cost of Committee Plan
(millions of dollars)

Year	Total FSP	Total Increase	State Cost Increase		
			Total	Legislated	Committee
1972-73	1,211				
1973-74	1,412	201	147	66	81
1974-75	1,602	190	200	119	81
1975-76	1,723	121	169	25	144
1976-77	1,831	108	149	26	123
1977-78	1,949	118	184	40	144
1978-79	2,075	126	243	104	139

Annual state cost increases under the Committee's plan exceed total annual cost increases in the Foundation School Program beginning in 1974-75, of course, because of the phase-out of the local share. As the required local percentage declines, the cost to the state rises.

Estimated biennial total and state costs and total and state cost increases of the plan of the State Board Committee through the 1978-1979 biennium are shown in the following table. These estimates also include the costs of increases in the Foundation School Program already enacted into law.

Estimated Biennial State Cost of Committee Plan
(millions of dollars)

Biennium	Foundation School Program Cost		Biennial Increase	
	Total	State	Total	State
1974-1975	3,014	2,460	593	494
1976-1977	3,554	3,147	540	687
1978-1979	4,024	3,907	470	760

Although the State Board Committee plan contained detailed cost estimates, similar figures are not yet available for the Texas State Teachers Association proposal. It has not been possible, moreover, to develop independent cost estimates for this report. (The Texas Research League study mentioned previously will contain independent estimates.) In releasing its plan, however, TSTA stated that the total cost of the proposal might be assumed to be about $2 billion annually; and this figure is used as the only available estimate of the cost of the TSTA plan.

Assuming a total annual Foundation School Program cost of $2 billion and a 70 percent state share, the annual state cost of the TSTA proposal would be about $1.4 billion. TSTA has not indicated whether it would recommend a phasing-in of its plan. If the plan were implemented in the 1973-74 state fiscal year, however, the increased state cost of the plan could be approximately that shown in the following table.

Estimated State Cost of TSTA Plan
(millions of dollars)

Year	Total FSP	State Share	State Cost Increase	
			Annual	Cumulative 2-Year
1972-73	1,211	983		
1973-74	2,000	1,400	417	
1974-75	2,135	1,494	94	928

If previously legislated Foundation School Program cost increases are not included in the $2 billion estimate of the cost of the TSTA plan for 1973-74, the following total state cost increase could occur under the TSTA plan when these costs are added.

Alternative Estimated State Cost of TSTA Plan
(millions of dollars)

Year	Total FSP	State Share	State Cost Increase	
			Annual	Cumulative 2-Year
1972-73	1,211	983		
1973-74	2,079	1,455	472	
1974-75	2,214	1,550	95	1,039

Enactment of either the State Board Committee plan or the Texas State Teachers Association plan would require the commitment of significant new state resources to public school education in Texas. The impact of either plan on the 1974-1975 biennial state budget would be significant, but the full effect of the State Board Committee proposal would occur in stages through 1978-79. The TSTA proposal, however, if completely implemented by the 63rd Legislature, apparently could require additional state funds for public school education of about $1 billion in the 1974-1975 biennium.

MEASURING SCHOOL DISTRICT FISCAL ABILITY

Local school district property taxes of $646 million comprised just over 37 percent of the $1,724 million available from state and local sources, excluding bond proceeds and debt service taxes, to finance Texas public schools in the 1970-71 school year. Approximately $190 million of school property tax revenues, about 29 percent, was required in 1970-71 to pay the local share of the Foundation School Program. The other $456 million, 71 percent, was used to fund program expenditures in excess of the Foundation School Program.

In addition to $646 million in operating revenues, local property taxes of $168 million in 1970-71 were required for debt service on school bonds. Since school building programs have traditionally been a local responsibility only, they are not considered in the following. The Rodriguez case if upheld, as has been noted, however, may require that revenues for this purpose, as well as operating revenues, be equalized.

The Local Property Tax and the Foundation School Program

Under the Foundation School Program the state attempts to guarantee a basic educational program in each Texas school district, as the previous section of this report indicated. The statewide cost of this program is shared by local districts and the state government, with local districts paying approximately 20 percent of the total. Each school district participates in the funding of the 20 percent local share according to its fiscal ability as measured by the state, using the so-called Economic Index - County Tax Roll method.* The state government funds the remaining 80 percent of statewide Foundation School Program costs.

A state aid system like the Foundation School Program is supposed to equalize the tax effort required by each school district to finance the state-guaranteed program. An equal tax effort means that the local property tax is levied in each school district at the same rate per dollar

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*The Economic Index - County Tax Roll approach measures fiscal ability according to the following factors and weights: (1) assessed valuation of county - 20; (2) scholastic population of county - 8; and (3) combination of income measures for county - 72. The resulting county figure is compared to the state total to determine the fiscal ability of the county; each school district is then assigned a portion according to the percentage of the county's assessed value within the school district. For a full explanation, see Issues in School Finance: A Texas Primer, Richard L. Hooker, Texas Association of School Boards, Austin, Texas, n.d.

of full value of property in the district - at the same effective rate. At this uniform statewide rate the tax should produce sufficient revenues to fund the legally established local share of the total costs of the education program guaranteed by the state.

Because each district presumably contributes to the required statewide local share according to its fiscal ability, districts with greater ability should contribute more than districts with lesser ability. State aid under this financing scheme should equalize the revenues per student available in each district to fund the state-guaranteed program by making up the difference between the money each district can raise at the same level of tax effort and the cost of the state-guaranteed program in that district.

Studies of school finance in Texas have clearly demonstrated that the Foundation School Program does not operate in this fashion. Local property tax rates per $100 of estimated full-value required to fund the local share of the Foundation School Program range from less than 4.9¢ to over 75¢ among Texas school districts. In the vast majority of districts the effective rate falls between extremes of 5¢ and 25¢, a difference of four hundred percent.

The primary cause of these different effective tax rates is the method used by the state to measure the fiscal ability of school districts. Although Texas school districts are limited to use of the property tax to raise local tax revenues, the Economic Index - County Tax Roll approach does not measure the local property tax base of each district. The state, as a consequence, assigns incorrect fiscal abilities to its school districts.

The state aid actually received by each school district in Texas *is* normally an amount which closes the gap between what the district is supposed to raise, based on its assigned fiscal ability, and the cost of the state-guaranteed program in the district. Since the measure of each school district's fiscal ability is erroneous, however, each district has to make a different real tax effort in order to raise an amount which, when added with state aid, will fund the Foundation School Program in that district.*

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*Special benefits and credits available to some school districts under the Foundation School Program also affect the required local tax effort and the amount of state aid received by individual districts. For details, see Texas Public School Finance: A Majority of Exceptions, Texas Research League, Austin, Texas, 1972.

Complying With *RODRIGUEZ*

Expenditures per student differ significantly among Texas school districts, and these differences result not only from features of the Foundation School Program but are caused by supplementation of this program by local districts. In the 1970-71 school year the range within the Foundation School Program extended from a low of less than $300 to a high of over $1500, with most districts spending between $300 and $600 per student. Although about 70 percent of Texas public school students were in districts with between $100 and $300 in extra revenue, local funds available for spending in excess of the Foundation School Program -- enrichment revenue -- varied from less than $100 to more than $7000 per student. It is the differences in total spending (exclusive of federal funds and, possibly, capital improvement monies), which are challenged in the Rodriguez case.

Local property taxes, almost exclusively, support enrichment, and the state has historically made no attempt to equalize the ability of school districts to finance this spending. While there are a number of possible school finance schemes which would meet the Rodriguez standard, whatever scheme is adopted will have to encompass a significant amount, if not all, of current enrichment spending unless many school districts are forced to cut their programs back severely. If Texas chooses an equalizing state aid scheme like the current Foundation School Program, a proper method for measuring local school district fiscal ability could be crucial to compliance with the Rodriguez decision if it is upheld. A faulty measure of school district fiscal ability would result in either too little or too much state aid being provided to various of the state's school districts. As a result, the state program would not guarantee equal revenues per student. It would, in fact, guarantee that revenues per student would be unequal unless school districts make different tax efforts.

The Question of Taxpayer Equity

The Rodriguez case does not appear to involve directly the question of taxpayer equity in the financing of public school education in Texas. Several court suits in other states, however, have challenged school finance systems on this ground. The school finance systems of New Jersey and Arizona have been held unconstitutional by state courts because they impose unequal tax burdens for support of the statewide public school education program. Similar cases are pending in both state and federal courts in Illinois, Indiana and additional states.

In February 1970, the Dallas, Fort Worth and Houston independent school districts filed a case in federal district court alleging inequity in the Texas school finance system. The import of the contention made by the plaintiffs in this case is that taxpayers in these districts are required

to pay more taxes per dollar of actual property value to support the Foundation School Program than taxpayers in other Texas school districts. The reason for this inequity in tax burden according to the plaintiffs is because the state obtains an erroneous measurement of the tax base of the districts by use of the Economic Index - County Tax Roll approach.

Under the Foundation School Program, or any state-local financing scheme like it, the effective tax rate required to finance the local share of the state-guaranteed educational program in each school district ought to be about the same. As studies in Texas have shown, the rates necessary to finance the local share of the Foundation School Program vary markedly. If Texas continues to utilize an equalizing state aid approach to financing the state's guaranteed public school education program, taxpayer equity should be achieved in the new system. Even if the Rodriguez decision is not construed to require equalization of tax burdens, the Dallas-Fort Worth-Houston ISD suit, or some other court test, will probably sooner or later make it necessary.

An Equitable Measure of Fiscal Ability

Local school districts in Texas can levy only one kind of tax, the property tax, and the only proper measure of school district fiscal ability is the full value of its property tax base. Twenty-nine other states regularly determine the full value of property in each school district for use in their public school finance systems.

> THE COMMISSION RECOMMENDS THAT LEGISLATION BE ENACTED BY THE 63RD LEGISLATURE TO ESTABLISH A PROCEDURE FOR ESTIMATING THE FULL VALUE OF SCHOOL DISTRICT PROPERTY IN TEXAS.

In order for the state to have an efficient procedure for estimating the full value of property in its school districts, some method for reporting parcel and sales data on real estate transfers will be required. These data are absolutely essential to accurate estimation.

> THE COMMISSION, THEREFORE, FURTHER RECOMMENDS THAT LEGISLATION BE ENACTED TO PROVIDE FOR THE COLLECTION OF PARCEL AND SALES INFORMATION ON REAL ESTATE TRANSFERS.

It should be made clear that state estimation of school district property values would not interfere with local administration of the property tax. Each jurisdiction would continue to appraise, assess and collect its property taxes in accordance with local practice and local decisions. The purpose of the state estimation procedure recommended by the Commission is simply to establish comparable estimates of the full value of property in each district in order for the state to have a correct measure of each district's ability to finance public school education.

In making these recommendations the Commission recognizes the fundamental problem associated with any attempt by the state to estimate the full value of local property. This problem is caused by the incongruity between what is taxed by local school districts and what the Constitution and statutes of Texas say is supposed to be taxed. At the core of this incongruity lies intangible personal property.

Although the Constitution and statutes require that intangibles, such as stocks, bonds and cash holdings, be taxed ad valorem, this property for the most part has traditionally been excluded in practice from the property tax base. With limited exceptions intangibles are extremely difficult for taxing authorities to find, and under the most favorable circumstances the tax on them is not easy to enforce. Under the broad Texas definition of intangible property, furthermore, an ad valorem levy on some evidences of debt, such as residential mortgages, would amount to double taxation. Many intangibles also are highly mobile and can easily be shifted out of any jurisdiction which attempts to tax them. Of additional importance in Texas is the fact that the full body of administrative law required to locate intangible property and enforce taxes on it has never been supplied to local tax assessors.

Since under present law intangibles should but cannot practically be taxed, a powerful dilemma exists with regard to the use of state estimates of property values for school finance purposes. If the state attempts to use the legal definition of the property tax, and succeeded in making estimates, however imperfect, of the value of intangibles, it would assign fiscal abilities to school districts which would not, in fact, represent a measure of the actual and useable local tax base. If, on the other hand, the state relies upon school district tax rolls (with values added for any significant real or tangible personal property missed by local districts, e.g., motor vehicles) owners of real and tangible personal property, in effect, would have to bear the burden of taxes avoided by owners of the intangible property which was excluded. Property owners faced with major upward adjustments in tax liability because of the use of either new measure of fiscal ability among school districts probably would not be content with the outcome as long as the property tax itself is unchanged.

The Commission views action on the property tax, either to enable property tax assessors to utilize the tax base principally as the Constitution and statutes define it, or to redefine the tax base so that it is administratively feasible, or both, a matter of great importance and urgency for the 63rd Legislature. This action, furthermore, will probably be fundamental to solving the public school finance issue. The Legislative Property Tax Committee has been considering several alternatives in this regard and may present some proposal or proposals for legislative consideration.

The Commission is considering draft legislation which would provide for a state estimating procedure and for collection of data on real estate transfers. Enactment and prompt implementation of such legislation would

allow approximately a year for the state to develop initial estimates for possible use in the school year beginning in September 1974. Because of the size and complexity of the work required and the time which must be allowed for organization of a staff, it would be quite difficult, if not impossible, to develop initial estimates in less than a year.

The recommendation of this legislation by the Commission is not prejudicial to any proposal which has been advanced for altering Texas' school finance system. Whatever new system may be adopted by the Legislature, the estimates of school district tax bases which the recommended legislation would make possible will be needed by the state as long as the local property tax is used in some manner to finance public school expenditures.

A LEGISLATIVE STRATEGY

As the Texas Legislature meets to begin the 63rd regular session, it is confronted with the most difficult challenge to face the state in many years. Reform of public school education finance will require the Legislature to revise financing of the largest and most expensive function of state and local government in Texas. The price of reform is potentially so great that the legislation involved could easily be the most costly considered in this decade and, possibly, for a number of decades in the future. The task before the Legislature is formidable and will have to be approached with foresight and fortitude.

Public School Finance and Property Tax Reform

Settling the public school finance problem on the terms of the District Court decision in the Rodriguez case probably cannot be accomplished without major revision of the local property tax. Local property taxes presently provide over one-third of public school education revenues from state and local sources. Equalization of revenues, as required by the court decision, may require almost $500 million in additional state resources on an annual basis, using the TSTA plan as the bench mark. To abandon the local school property tax for current operations would be to add about $800 million in additional new annual revenues from state sources to the amount which may be needed to equalize student support.

Unless the local school property tax is abandoned, development of a new public school finance plan will require the Legislature to tackle head-on the question of how to utilize more fully the large property resources of the state's very wealthy school districts. These districts now outspend per student all other districts by very wide margins while using only a fraction of their property tax wealth. In order to equalize revenue-raising ability while retaining the property tax as a major public school revenue source, some method will have to be devised for sharing these substantial resources. This is the point where public school finance reform and property tax reform merge.

Intangible personal property, while legally taxable, largely escapes taxation in Texas, as has been noted. Before the state attempts to require sharing of the large and primarily *REAL* property resources now sitting in relative isolation in various small school districts, either a redefinition of the property tax base or vastly improved property tax administration, or both, will be necessary. Otherwise, the large tax increases which these underutilized resources would have to bear while other, principally intangible, property escapes taxation will very likely not be acceptable.

A Special Session for Reform

Regardless of whether the local property tax is retained as a major source of public school financial support, equalization of revenues presents the Legislature with a problem in taxation which will have profound affects upon the state for the foreseeable future. New annual state resources of $500 million - much less $1.3 billion - for Texas public schools is not easily comprehended, but they will be much less easily secured by the Legislature. With all the other issues which must be considered during the regular session, the 63rd Legislature cannot be expected to finish the work of public school finance reform.

> THE ADVISORY COMMISSION RECOMMENDS THAT THE LEGISLATURE MAKE EVERY EFFORT TO CONSIDER ALL THE ALTERNATIVES FOR REFORM THROUGH COMMITTEE HEARINGS DURING THE REGULAR SESSION BUT THAT NO MAJOR PUBLIC SCHOOL FINANCE LEGISLATION BE ENACTED UNTIL A SPECIAL, CALLED SESSION IN JUNE AND THAT THE GOVERNOR PLEDGE TO CALL THIS SESSION.

The Commission believes that every individual among the 181 members of the Legislature should have sufficient opportunity to become thoroughly knowledgeable on the public school finance issue. Every member, furthermore, ought to have time to consider, debate and vote upon this matter in an atmosphere which does not contain the diverting influences and complicating factors of a regular session.

A decision on the part of the state's leadership to defer passage of major reform legislation to a special session would permit legislative committees to develop a plan or alternative plans which the whole membership could then carefully consider without the haste caused by the press of other duties faced in the regular session. In addition, legislative consideration of various alternatives during the regular session would place the school finance issue before the public as it has not been during the past year. As a result the public would have a better opportunity to understand what is involved and to express its will to the Legislature more meaningfully.

The Commission's recommendation, it should be noted, does not pertain to the state estimating legislation recommended in the previous section. That legislation is not substantive in nature. By itself, it would make no change whatsoever in public school financing; it would simply prepare the state to give effect to a new system.

Staffing the Legislature

It is not known, of course, when the final decision in the Rodriguez case will be handed down or whether the District Court decision will be upheld. Until the Supreme Court rules, however, the Legislature will have to proceed as if the lower court decision had been affirmed.

Legislative operation under a court decision creates a situation unlike that usually faced. Ordinarily, both the purpose or outcome intended in legislation and the means to be used to obtain this purpose are matters to be determined by the Legislature. Legislative judgment is the sole test of whether the purpose intended and the means established are compatible. Whether they are in fact need not be shown in advance.

In the case of public school finance, the court has established the purpose which must be sought by new legislation, and the Legislature must satisfy not only itself but the court, also, that the means it adopts will achieve this purpose. Legislative judgment will not suffice; demonstration is required. In considering public school finance reform, consequently, the 63rd Legislature needs to be equipped with a competent staff to analyze and evaluate the effects of various approaches to compliance with the Rodriguez decision which may be considered.

Although the study efforts of the past year may not have produced a plan which clearly complies with the Rodriguez decision, they have brought about development of a capability, not previously available, to analyze and evaluate alternative approaches to school finance. The personnel who represent this capability are employed by a number of public and private organizations, and utilization of their skills would be of vital benefit to the work of the 63rd Legislature in public school finance reform.

The Commission strongly suggests that the Legislature try to arrange to borrow these personnel and make them directly responsive to the Legislature itself. A single staff to serve both houses of the Legislature would be advisable in order to have the best available personnel serving both bodies and to achieve considerably more efficiency in analyses and evaluation. A full-time director should be appointed and individual staff personnel should be assigned from both public and private agencies to work under this director on a temporary basis. Because of the limited number of competent persons available for this work, some part-time or shared-time arrangements would undoubtedly be necessary. Without this staff, however the Legislature will find itself seriously handicapped in attempting to perform its responsibilities in public school finance reform.